

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 808

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Lidio G. Rainaldi

AN ACT

RELATING TO DELINQUENCY; CHANGING THE DEFINITION FOR YOUTHFUL
OFFENDER; ALLOWING THE COURT TO HEAR AND CONSIDER HEARSAY
EVIDENCE IN A PROBATION REVOCATION PROCEEDING REGARDING THE
DISPOSITION OF A CHILD FOUND TO BE INCOMPETENT TO STAND TRIAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Delinquency Act is
enacted to read:

" [NEW MATERIAL] DISPOSITION OF AN INCOMPETENT CHILD IN A
DELINQUENCY PROCEEDING. --

A. A child's competency to stand trial or
participate in his own defense may be raised by a party at any
time during a proceeding and:

(1) if the child's competency is questioned,
the court shall stay further proceedings until the issue is

underscored material = new
[bracketed material] = delete

1 determined. The time limitation for commencing an adjudicatory
2 proceeding shall be stayed for the period of time the
3 proceedings are stayed pursuant to this section; and

4 (2) the child's competency shall be
5 professionally evaluated by a psychologist or psychiatrist or
6 other qualified professional recognized by the court as an
7 expert, and a report shall be submitted as ordered by the
8 court. A hearing on the issue of the competency of a child in
9 detention shall be held by the court within a reasonable time,
10 but in no event later than thirty days after notification to
11 the court of completion of the diagnostic evaluation.

12 B. If the court determines after the hearing that
13 the child is incompetent to proceed and determines that the
14 child presents a serious threat of inflicting great bodily harm
15 on another or of violating Section 30-9-11 or 30-9-13 NMSA
16 1978, the court shall order treatment to attain competency and
17 may:

18 (1) impose reasonable conditions of release
19 during the period of treatment; or

20 (2) order the child detained and initiate
21 proceedings for the involuntary commitment of the child
22 pursuant to the provisions of the Children's Mental Health and
23 Developmental Disabilities Act. If the child is placed for
24 residential treatment or habilitation pursuant to the
25 provisions of that act, the department shall retain legal

underscored material = new
[bracketed material] = delete

1 custody during the period of involuntary placement or until
2 further order of the court.

3 C. If the court determines after the hearing that
4 the child is incompetent to proceed, and the court does not
5 find that the child presents a serious threat of inflicting
6 great bodily harm on another or of violating Section 30-9-11 or
7 30-9-13 NMSA 1978, the court may order treatment to attain
8 competency or dismiss the delinquency petition without
9 prejudice. Upon dismissal, the court shall advise the district
10 attorney to consider initiation of proceedings pursuant to the
11 provisions of the Children's Mental Health and Developmental
12 Disabilities Act and order the child confined for a maximum of
13 seven days to facilitate preparation and initiation of a
14 petition pursuant to that act.

15 D. If the court determines after the hearing that
16 the child is competent to proceed, the court shall lift the
17 stay and proceed with the delinquency petition.

18 E. Within sixty days of the entry of an order for
19 treatment to attain competency, the court, sitting without a
20 jury, shall conduct a hearing, unless waived by the child. The
21 court shall determine whether the child is competent to
22 proceed, and, if not, whether the child is making progress
23 toward competency and whether the child continues to present a
24 serious threat of inflicting great bodily harm on another or of
25 violating Section 30-9-11 or 30-9-13 NMSA 1978. If the court

. 145395. 1

underscored material = new
[bracketed material] = delete

1 finds that:

2 (1) the child is competent, the court shall
3 proceed on the charges; provided that if the child needs
4 continued care or treatment and the supervisor of the child's
5 treatment agrees to continue to provide it, the court may enter
6 an order it deems appropriate for the continued care or
7 treatment of the child by the facility or program pending the
8 conclusion of the delinquency proceedings;

9 (2) the child is incompetent to proceed and
10 that the child is making progress toward the attainment of
11 competency, the court shall continue its original treatment
12 order; provided that the question of the child's competency
13 shall be reviewed again not later than six months from the
14 original determination of incompetency;

15 (3) the child is incompetent, that the child
16 is not making progress toward attaining competency and that the
17 child continues to present a serious threat of inflicting great
18 bodily harm on another or of violating Section 30-9-11 or
19 30-9-13 NMSA 1978, the court shall continue its original
20 treatment order; provided that the question of the child's
21 competency shall be reviewed again not later than six months
22 from the original determination of incompetency; or

23 (4) the child is incompetent, that the child
24 is not making progress toward attaining competency and that the
25 child no longer presents a serious threat of inflicting great

underscored material = new
[bracketed material] = delete

1 bodily harm on another or of violating Section 30-9-11 or
2 30-9-13 NMSA 1978, the court shall dismiss the delinquency
3 petition without prejudice and initiate proceedings for
4 commitment pursuant to the provisions of the Children's Mental
5 Health and Developmental Disabilities Act.

6 F. Unless the petition is dismissed pursuant to
7 this section, the court shall conduct a hearing, without a
8 jury, within six months of the entry of an order for treatment
9 to attain competency and for conditions of release or detention
10 and commitment pursuant to this section. The court shall
11 determine whether the child continues to be incompetent to
12 proceed and continues to present a serious threat of inflicting
13 great bodily harm on another or of violating Section 30-9-11 or
14 30-9-13 NMSA 1978. If the child is:

15 (1) found competent to proceed by the court,
16 the court shall proceed on the delinquency petition; provided
17 that if the child is in need of continued care or treatment and
18 the supervisor of the child's treatment agrees to continue to
19 provide it, the court may enter any order it deems appropriate
20 for the continued care or treatment of the child by the
21 facility or program pending the conclusion of the delinquency
22 proceedings;

23 (2) an alleged delinquent offender, and if the
24 court finds that the child is still incompetent to proceed on
25 the delinquency petition, the court shall dismiss the petition

. 145395. 1

underscored material = new
[bracketed material] = delete

1 without prejudice and refer the child to the district attorney
2 for commitment proceedings pursuant to the provisions of the
3 Children's Mental Health and Developmental Disabilities Act; or

4 (3) alleged youthful offender or serious
5 youthful offender, and if the court finds that the child is
6 still incompetent and that the child continues to present a
7 serious threat of inflicting great bodily harm on another or of
8 violating Section 30-9-11 or 30-9-13 NMSA 1978, the court shall
9 determine whether there is clear and convincing evidence that
10 the child committed the offense charged. The children's court
11 attorney and the child may introduce evidence relevant to the
12 question of the child's commission of the offense or offenses
13 charged. The court may consider hearsay or affidavit evidence
14 on secondary matters, such as testimony to establish the chain
15 of possession of physical evidence, laboratory reports,
16 authentication of transcripts taken by official reporters,
17 district court and business records and public documents. If
18 the court finds there is:

19 (a) clear and convincing evidence that
20 the child committed the offense charged, the court shall
21 continue its original treatment order; provided that the order
22 shall remain in effect no longer than a period of time equal to
23 the maximum sentence the child could have received if
24 adjudicated as a youthful offender or serious youthful
25 offender. As provided in Section 32A-2-20 NMSA 1978, the

underscored material = new
[bracketed material] = delete

1 maximum sentence a youthful offender may receive is the
2 mandatory adult sentence for the offense or offenses committed.
3 At least every two years, the court shall conduct a hearing to
4 determine whether the child continues to be incompetent and
5 continues to present a serious threat of inflicting great
6 bodily harm on another or of violating Section 30-9-11 or
7 30-9-13 NMSA 1978. The order for treatment and for conditions
8 of release or detention and commitment shall continue only if
9 the child continues to be incompetent and continues to present
10 a serious threat of inflicting great bodily harm on another or
11 of violating Section 30-9-11 or 30-9-13 NMSA 1978; otherwise,
12 the delinquency petition shall be dismissed without prejudice
13 and the court shall refer the child to the district attorney
14 for commitment proceedings pursuant to the provisions of the
15 Children's Mental Health and Developmental Disabilities Act; or

16 (b) not clear and convincing evidence
17 that the child committed the offense charged, the court shall
18 dismiss the petition without prejudice and refer the child to
19 the district attorney for commitment proceedings pursuant to
20 the Children's Mental Health and Developmental Disabilities
21 Act. "

22 Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 32, as amended) is amended to read:

24 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

25 A. "delinquent act" means an act committed by a

underscored material = new
[bracketed material] = delete

1 child that would be designated as a crime under the law if
2 committed by an adult, including the following offenses:

3 (1) pursuant to municipal traffic codes or the
4 Motor Vehicle Code:

5 (a) any driving while under the
6 influence of intoxicating liquor or drugs;

7 (b) any failure to stop in the event of
8 an accident causing death, personal injury or damage to
9 property;

10 (c) any unlawful taking of a vehicle or
11 motor vehicle;

12 (d) any receiving or transferring of a
13 stolen vehicle or motor vehicle;

14 (e) any homicide by vehicle;

15 (f) any injuring or tampering with a
16 vehicle;

17 (g) any altering or changing of an
18 engine number or other vehicle identification numbers;

19 (h) any altering or forging of a
20 driver's license or permit or any making of a fictitious
21 license or permit;

22 (i) reckless driving;

23 (j) driving with a suspended or revoked
24 license; or

25 (k) any offense punishable as a felony;

. 145395. 1

underscored material = new
[bracketed material] = delete

1 (2) buying, attempting to buy, receiving,
2 possessing or being served any alcoholic liquor or being
3 present in a licensed liquor establishment, other than a
4 restaurant or a licensed retail liquor establishment, except in
5 the presence of the child's parent, guardian, custodian or
6 adult spouse. As used in this paragraph, "restaurant" means
7 any establishment where meals are prepared and served primarily
8 for on-premises consumption and that has a dining room, a
9 kitchen and the employees necessary for preparing, cooking and
10 serving meals. "Restaurant" does not include [~~establishments~~
11 an establishment], as defined in regulations promulgated by the
12 director of the special investigations division of the
13 department of public safety, that [~~serve~~] serves only
14 hamburgers, sandwiches, salads and other fast foods;

15 (3) any felony violation of the provisions of
16 Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations
17 adopted by the state game commission that relate to the time,
18 extent, means or manner that game animals, birds or fish may be
19 hunted, taken, captured, killed, possessed, sold, purchased or
20 shipped and for which a fine may be imposed or a civil damage
21 awarded;

22 (4) any violation of Section 30-29-2 NMSA
23 1978, regarding the illegal use of a glue, aerosol spray
24 product or other chemical substance;

25 (5) any violation of the Controlled Substances

1 Act;

2 (6) escape from the custody of a law
3 enforcement officer or a juvenile probation or parole officer
4 or from any placement made by the department by a child who has
5 been adjudicated a delinquent child; or

6 (7) any violation of Section 30-15-1.1 NMSA
7 1978 regarding unauthorized graffiti on personal or real
8 property;

9 B. "delinquent child" means a child who has
10 committed a delinquent act;

11 C. "delinquent offender" means a delinquent child
12 who is subject to juvenile sanctions only and who is not a
13 youthful offender or a serious youthful offender;

14 D. "detention facility" means a place where a child
15 may be detained under the Children's Code pending court hearing
16 and does not include a facility for the care and rehabilitation
17 of an adjudicated delinquent child;

18 E. "felony" means an act that would be a felony if
19 committed by an adult;

20 F. "misdemeanor" means an act that would be a
21 misdemeanor or petty misdemeanor if committed by an adult;

22 G. "restitution" means financial reimbursement by
23 the child to the victim or community service imposed by the
24 court and is limited to easily ascertainable damages for injury
25 to or loss of property, actual expenses incurred for medical,

underscored material = new
[bracketed material] = delete

1 psychiatric and psychological treatment for injury to a person
2 and lost wages resulting from physical injury, which are a
3 direct and proximate result of a delinquent act. "Restitution"
4 does not include reimbursement for damages for mental anguish,
5 pain and suffering or other intangible losses. As used in this
6 subsection, "victim" means any person who is injured or suffers
7 damage of any kind by an act that is the subject of a complaint
8 or referral to law enforcement officers or juvenile probation
9 authorities. Nothing contained in this definition limits or
10 replaces the provisions of Subsections A and B of Section
11 32A-2-27 NMSA 1978;

12 H. "serious youthful offender" means an individual
13 fifteen to eighteen years of age who is charged with and
14 indicted or bound over for trial for first degree murder. A
15 "serious youthful offender" is not a delinquent child as
16 defined pursuant to the provisions of this section; and

17 I. "youthful offender" means a delinquent child
18 subject to adult or juvenile sanctions who is:

19 (1) fourteen to eighteen years of age at the
20 time of the offense and who is adjudicated for at least one of
21 the following offenses:

22 (a) second degree murder, as provided in
23 Section 30-2-1 NMSA 1978;

24 (b) assault with intent to commit a
25 violent felony, as provided in Section 30-3-3 NMSA 1978;

. 145395. 1

underscored material = new
[bracketed material] = delete

1 (c) kidnapping, as provided in Section
2 30-4-1 NMSA 1978;

3 (d) aggravated battery, as provided in
4 Subsection C of Section 30-3-5 NMSA 1978;

5 (e) aggravated battery upon a peace
6 officer, as provided in Subsection C of Section 30-22-25 NMSA
7 1978;

8 (f) shooting at a dwelling or occupied
9 building or shooting at or from a motor vehicle, as provided in
10 Section 30-3-8 NMSA 1978;

11 (g) dangerous use of explosives, as
12 provided in Section 30-7-5 NMSA 1978;

13 (h) criminal sexual penetration, as
14 provided in Section 30-9-11 NMSA 1978;

15 (i) criminal sexual contact of a minor,
16 as provided in Section 30-9-13 NMSA 1978;

17 [~~(i)~~] (j) robbery, as provided in
18 Section 30-16-2 NMSA 1978;

19 [~~(j)~~] (k) aggravated burglary, as
20 provided in Section 30-16-4 NMSA 1978;

21 [~~(k)~~] (l) aggravated arson, as provided
22 in Section 30-17-6 NMSA 1978; [~~or~~

23 ~~(l)~~] (m) abuse of a child that results
24 in great bodily harm or death to the child, as provided in
25 Section 30-6-1 NMSA 1978; or

. 145395. 1

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(n) attempt to commit first degree murder or attempt to commit any offense listed in this subsection;

(2) fourteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fourteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978. "

Section 3. Section 32A-2-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 50, as amended) is amended to read:

"32A-2-21. DISPOSITION OF A MENTALLY DISORDERED OR DEVELOPMENTALLY DISABLED CHILD IN A DELINQUENCY PROCEEDING. --

A. If in a hearing at any stage of a proceeding on a delinquency petition the evidence indicates that the child is or may be developmentally disabled or mentally disordered, the court may:

(1) order the child detained if appropriate under the criteria established pursuant to the provisions of the Delinquency Act; and

underscored material = new
[bracketed material] = delete

1 (2) initiate proceedings for the involuntary
2 placement of the child as a mentally disordered or
3 developmentally disabled minor pursuant to the provisions of
4 the Children's Mental Health and Developmental Disabilities
5 Act.

6 B. If the child is placed for residential treatment
7 or habilitation pursuant to the Children's Mental Health and
8 Developmental Disabilities Act, the department shall retain
9 legal custody during the period of involuntary placement or
10 until further order of the court.

11 C. If a child is committed to a psychiatric
12 hospital for treatment or habilitation and in the event that
13 the department should be required to pay more than four hundred
14 dollars (\$400) per day because of the individualized treatment
15 plan, the annual costs over four hundred dollars (\$400) per
16 child per day will be reported annually by the department to
17 the legislative finance committee.

18 D. The child may remain in the residential
19 treatment or habilitation facility pending the disposition of
20 the delinquency petition.

21 E. When a child in departmental custody needs
22 involuntary placement for residential mental health or
23 developmental disability services as a result of a mental
24 disorder or developmental disability, the department shall
25 request the children's court attorney to petition for that

underscored material = new
[bracketed material] = delete

1 child's placement pursuant to the provisions of the Children's
2 Mental Health and Developmental Disabilities Act.

3 F. A child subject to the provisions of the
4 Delinquency Act who receives treatment in a residential
5 treatment or habilitation program shall enjoy all the
6 substantive and procedural rights set forth in the Children's
7 Mental Health and Developmental Disabilities Act.

8 ~~[G. A child's competency to stand trial or~~
9 ~~participate in his own defense may be raised by any party at~~
10 ~~any time during a proceeding. If the court determines that a~~
11 ~~child is incompetent to stand trial or participate in his own~~
12 ~~defense, the court may dismiss the petition without prejudice~~
13 ~~and initiate proceedings pursuant to the provisions of the~~
14 ~~Children's Mental Health and Developmental Disabilities Act.]"~~

15 Section 4. Section 32A-2-24 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 53) is amended to read:

17 "32A-2-24. PROBATION REVOCATION--DISPOSITION. --

18 A. A child on probation incident to an adjudication
19 as a delinquent child who violates a term of the probation may
20 be proceeded against in a probation revocation proceeding. A
21 proceeding to revoke probation shall be begun by filing in the
22 original proceeding a petition styled as a "petition to revoke
23 probation". Petitions to revoke probation shall be screened,
24 reviewed and prepared in the same manner and shall contain the
25 same information as petitions alleging delinquency. Procedures

. 145395. 1

underscored material = new
[bracketed material] = del ete

1 of the Delinquency Act regarding taking into custody and
2 detention shall apply. The petition shall state the terms of
3 probation alleged to have been violated and the factual basis
4 for these allegations.

5 B. The standard of proof in probation revocation
6 proceedings shall be evidence beyond a reasonable doubt and the
7 hearings shall be before the court without a jury. The court
8 may hear and consider heresay evidence in a probation
9 revocation proceeding. In all other respects, proceedings to
10 revoke probation shall be governed by the procedures, rights
11 and duties applicable to proceedings on a delinquency petition.
12 If a child is found to have violated a term of his probation,
13 the court may extend the period of probation or make any other
14 judgment or disposition that would have been appropriate in the
15 original disposition of the case. "